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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971 No. 71-782

FRED B. SMITH, SUPERINTENDENT OF INSURANCE OF OHIO,
Plaintiff-Petitioner,

v.

OHIO VALLEY INSURANCE COMPANY,
Defendant,

(BUCKEYE UNION INSURANCE COMPANY,
Intervening Defendant-Respondent),

(OHIO INSURANCE GUARANTY ASSOCIATION,
Intervening Defendant-Respondent),

(KEN BAILEY, ET AL.,
Intervening Defendant-Petitioner).

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY BRIEF OF PETITIONERS, SUPERINTENDENT OF INSURANCE OF OHIO AND KEN BAILEY, ET AL.

WILLIAM J. BROWN, Attorney General of Ohio
By William M. Lane, Special Counsel
150 East Broad Street
Columbus, Ohio 43215
Attorneys for Petitioner, Superintendent of Insurance of Ohio

(Continued Inside Front Cover)

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus, Ohio 43216

STEWART & DECHANT CO., L.P.A.
THOMAS H. DECHANT
1014 Hippodrome Building
Cleveland, Ohio 44114
Attorneys for Petitioners,
Ken Bailey, et al.

LANE, ALTON & HORST, formerly
CAREN, LANE, HUGGARD, ALTON & HORST
LOREN W. PETERS
150 East Broad Street
Columbus, Ohio 43215
Of Counsel

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The Superintendent of Insurance of Ohio and Ken Bailey, et al. (petitioners) believe that their petition for writ of certiorari and the memorandum of intervening defendant-respondent, Ohio Insurance Guaranty Association, clearly establish "special and important reasons" for review on certiorari as required by Rule 19 (a) of the Rules of this Court. Buckeye Union Insurance Company, intervening defendant-respondent (Buckeye Union) has, however, raised two specific points to which it is proper to reply under Rule 24.4 of this Court.

Buckeye Union has questioned, at pages 2 and 4 of its brief, the timeliness of the filing by the Superintendent of Insurance of Ohio of his motion for rehearing and re-

consideration in the Supreme Court of Ohio. That motion was timely filed, and the timeliness of its filing is not an issue in this Court because the Supreme Court of Ohio, by granting the National Association of Insurance Commissioners (NAIC) leave to file a brief amicus curiae on that motion and accepting the NAIC brief, in effect overruled Buckeye Union's motion to dismiss the motion for rehearing and reconsideration.

The Ohio Insurance Guaranty Association Act, Chapter 3955, Ohio Revised Code, as interpreted by the Supreme Court of Ohio, discriminates between claimants whose claims arose prior to the effective date of the Act and claimants whose claims arose thereafter. Buckeye Union, at pages 11 and 12 of its brief, attempts to justify the discrimination by claiming that its stockholders and others similarly situated would otherwise be unduly burdened by the losses of claimants whose claims arose prior to the effective date of the Act. This argument completely ignores the impact of Section 3955.17, Ohio Revised Code, which authorizes insurers to recoup their costs incurred in connection with insolvency of Ohio Valley Insurance Company by including such costs as one of the several prior experience factors upon which insurance companies base their policy rates. Obviously, no burden is imposed upon Buckeye Union and others similarly situated by application of Chapter 3955, Ohio Revised Code, for the benefit of all claimants against Ohio Valley Insurance Company.

Buckeye Union's argument, at pages 11 and 12 of its brief, is simply not relevant to the issue of discrimination in this case. The petitioners believe that whatever burden Buckeye Union may think it would suffer, which obviously cannot be economic, by permitting all claimants redress under the Act would arise not because of claims arising at a particular time, but because of the ultimate necessity of liquidating Ohio Valley Insurance Company.

Regardless of whether the necessity of liquidation of Ohio Valley Insurance Company is attributed to the volume of claims in relation to the company's assets, the character of the management of the company, the general economic conditions prevailing at the time the company became insolvent, or some other cause or combination of causes, it is patently unfair and contrary to Amendment XIV, Section 1, Constitution of the United States, to relieve Buckeye Union and others similarly situated from supposed burdens by requiring claimants accruing claims prior to an arbitrary date to absorb their own losses in addition to administrative expenses, while permitting claimants accruing claims after the arbitrary date to be made whole.

Buckeye Union's brief in no way diminishes the basis for granting review on certiorari set forth in the petition for writ of certiorari, nor does it in any way diminish the importance of review by this Court to the 40 or more states other than Ohio which have language in their respective guaranty association acts nearly identical to that of the Ohio Act. Petitioners, therefore, ask the Court, for the "special and important reasons" set forth in their petition and in the memorandum of intervening defendant-respondent, Ohio Insurance Guaranty Association, to consider and to resolve the issues presented in the petition for writ of certiorari.

Respectfully submitted,

WILLIAM J. BROWN, Attorney General of Ohio
By William M. Lane, Special Counsel
Attorneys for Petitioner, Superintendent
of Insurance of Ohio

By _____
Stewart & DeChant Co., L.P.A.
By _____
Thomas H. DeChant
Attorneys for Petitioners, Ken Bailey, et al.

CERTIFICATE OF SERVICE

The undersigned, William M. Lane attorney for petitioner Superintendent of Insurance of Ohio and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the _____ day of January, 1972, I served by mailing, in duly addressed envelopes, with first class postage prepaid, three printed copies of the foregoing Reply Brief of Petitioners, Superintendent of Insurance of Ohio and Ken Bailey, et al. on William L. Schmidt, 42 East Gay Street, Columbus, Ohio 43215, attorney for respondent, Buckeye Union Insurance Company; Crabbe, Brown, Jones, Potts & Schmidt, J. Roth Crabbe, 42 East Gay Street, Columbus, Ohio 43215, of counsel; Arthur I. Vorys, 52 East Gay Street, Columbus, Ohio 43215, attorney for intervening defendant-respondent, Ohio Insurance Guaranty Association; Vorys, Sater, Seymour & Pease, Thomas B. Ridgley and Elbert R. Nester, 52 East Gay Street, Columbus, Ohio 43215, of counsel, being all parties required to be served.

WILLIAM M. LANE

150 East Broad Street
Columbus, Ohio 43215